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CHARLES ELMORE DROPLEY
CLERK

United States of America

In the

Supreme Court of the United States

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No.

FRANCIS P. SLATTERY,
Petitioner and Appellant,
vs.

ALLEN A. McDONALD, Sheriff of Ingham County,
Respondent and Appellee

PETITION FOR WRIT OF CERTIORARI AND
BRIEF IN SUPPORT THEREOF

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PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE UNITED STATES:

**Francis P. Slattery, a citizen of the State of Michigan,
respectfully shows:**

SUMMARY OF FACTS

A Michigan statute authorizes Circuit Judges—but not Circuit Courts—to conduct secret inquisitorial proceedings (Sec. 17217, et seq. Comp. Laws 1929, Appendix A).

Since the judge functions somewhat as does a grand jury, he is commonly referred to as a one-man grand jury.

In practice, these inquisitorial proceedings are sometimes conducted by judges in chambers, sometimes in the court room behind locked doors and sometimes in secret locations away from the court building. And the practice has developed, when the inquisitor is dissatisfied with a witness' testimony, of recessing the inquisition, convening the court, and forthwith without notice or hearing, pronouncing the witness guilty of contempt of *court*.

In August, 1943, Judge Leland W. Carr, of Lansing, Michigan, acting under the statute, constituted himself a one-man grand jury to investigate charges of corruption in the Michigan Legislature. Armed with successive grants of funds which now total \$500,000.00, he assembled a staff of lawyers, accountants, and investigators, who have ever since been operating under the direction of the so-called one-man grand jury.

In November, 1944, Judge Carr subpoenaed petitioner to appear before him in this secret inquisitorial proceeding. The witness responded and was examined behind locked doors, with the public excluded, and the only persons present being Judge Carr, his stenographer and a special prosecutor. At the conclusion of the examination Judge Carr recessed the inquisition, convened the Circuit Court and forthwith made the following pronouncement:

"Let the record show that the Circuit Court of Ingham County is now in open session, the grand jury room doors having been unlocked and the room opened to the public.

"Let the record further show that as Judge of this Court I have been conducting a grand jury inquiry in the matter of Petition of Herbert H. Rush-ton, Attorney General of the State of Michigan, for a judicial investigation concerning certain criminal offenses; that the inquiry has been conducted in accordance with the statutes in this state, Sec. 17217 and 17218 of the Comp. Laws of 1929.

"That in the course of such inquiry, I have had before me a witness one Francis Slattery, and that the witness has wilfully and contemptuously *declined and refused to answer questions of a particular nature* put to him in the course of the inquiry; and for that reason it becomes the duty of the Court, the witness not having assigned any good and sufficient reason, or any reason whatsoever for his failure and refusal to answer those questions, to adjudge said Francis Slattery guilty of contempt of court.

"Mr. Slattery, you are so adjudged" (R. 8-9).

On the following day Mr. Slattery's attorneys asked Judge Carr for a transcript of the testimony upon which this contempt judgment was based as a basis for an appeal to the Michigan Supreme Court. He stated he would grant this only when ordered by the Michigan Supreme Court (R. 50 and 55). Petitions for Habeas Corpus and Certiorari were then filed with the Michigan Supreme Court and that Court issued a Writ of Certiorari requiring the return only of the court proceedings and not of the proceedings before the inquisitor. Judge Carr made his return accordingly.

Later, however, on his own motion, Judge Carr amended his return and included parts of the examination of Mr. Slattery, indicating by asterisks that he was omitting portions of it. In some cases answers were set forth without the questions. Consistent with its original position that Judge Carr was not required to return any of the transcript, the Michigan Supreme Court ruled that he was free to return only so much as he chose to.

From the amended partial return made by Judge Carr it appears that Mr. Slattery was an employee of the Michigan National Bank and in 1941 was active in lobbying against a bill before the Michigan Legislature aimed at his bank. When he was on the witness stand before the inquisitor he was asked whether he remembered that in May of 1941 a certain legislator had approached him in a hotel lobby, as a man with whom he had been talking walked away, and stated, "I have decided to change my mind about the bank bill if I get some money." Mr. Slattery replied, "I don't recall any such thing" (R. 61). To several repetitions of substantially the same question Mr. Slattery persisted in saying he had no recollection of any such incident, but declined to answer the question "Yes" or "No."

Judge Carr further returned, "*That from substantial evidence previously submitted to the grand jury, there was good and sufficient reason to believe*" that said legislator has solicited a bribe from Mr. Slattery, and that the latter recalled the incident (R. 64). Such other evidence has never been made a part of any court record but remains locked in the breast of the inquisitor. The Michigan Supreme Court affirmed the contempt conviction. Certiorari having been denied by this court, a writ of habeas corpus was issued by the District Court at Detroit, but upon hearing the writ was dismissed. Appeal was taken to the

Sixth Circuit Court of Appeals which affirmed the District Court's order and on November 12, 1945, denied a petition for rehearing.

STATUTORY PROVISION GIVING JURISDICTION TO THIS COURT

Petitioner's summary conviction of contempt of court for alleged misconduct not committed in open court without notice or hearing was a denial of due process under Section 1 of the Fourteenth Amendment to the United States Constitution reviewable by this court under Section 240 of the Judicial Code as amended.

QUESTIONS INVOLVED

The following questions are presented:

(1) Where it is sought to convict one of contempt of *Court*, based upon alleged false testimony before a Judge acting as an Inquisitor under the Michigan Inquisitorial Statute, does due process require the filing of charges, a notice and a hearing?

(2) Where the alleged contemptuous behavior, even if committed in open court, consists of alleged false testimony, of the falsity of which the Judge does not have personal knowledge, does due process require the filing of a charge, a notice and a hearing?

(3) Is imprisonment for contempt of *court*, based upon perjury alone, a denial of due process under the Michigan contempt statutes?

HOW QUESTIONS RAISED AND DISPOSED OF IN MICHIGAN COURT

No hearing having been granted in the Circuit Court, the first opportunity of presenting the questions was in the Michigan Supreme Court, and they were there raised both in petitioner's original brief and in the petition for rehearing.

These precise questions were ignored by the Michigan Supreme Court except for the following language:

"It was proper for Judge Carr to make an order finding petitioner guilty of contempt, not as a one-man grand jury, but as a circuit judge. It would have been an idle gesture for him to have the record of a case, in which he had sat, first written up and then submitted to himself."

REASONS FOR ALLOWANCE OF WRIT

A Writ of Certiorari should issue from this court for the following reasons:

(a) It is now the practice in Michigan of Judges who are operating under the Michigan Inquisitorial Statute, when they disbelieve the testimony of a witness, to convene court and forthwith pronounce judgment of guilt of contempt of court. Though a clear violation of both the State and Federal Constitutions, this practice has now been sanctioned formally by the Michigan Supreme Court.*

*Other recent summary orders for convictions of contempt of court for alleged false swearing in inquisitorial proceedings are:

By Judge (now Senator) Ferguson:

John P. McCarthy, August 31, 1939, on charge that he did "wilfully, deliberately and corruptly testified falsely." Judge Ferguson refused McCarthy a copy of the transcript as a basis for an appeal. The Michigan Supreme Court affirmed his action on the ground the question was moot, though his conviction resulted in his suspension from the police force. (*McCarthy v. Judge*, 294 Mich. 368.)

(Continued next page)

(b) There has developed the further practice of such Judges refusing to make available for an appeal a transcript of the testimony upon which the contempt conviction is based, and this practice is likewise now sanctioned by the Michigan Supreme Court.

(c) The net result of these holdings is that Inquisitors are now given the power to imprison a citizen whose testimony does not suit them and such citizen is not only deprived of a hearing but is denied a copy of the record on which his conviction is founded, as a basis of review, except as to such parts as the Inquisitor sees fit to give him.

(d) Unless this Court intervenes, therefore, Michigan citizens will henceforth be deprived of their constitutional rights.

(e) The three Federal questions here presented have not been passed upon by this Court.

Frank J. Clesson, August 24, 1940, on charge that he "answered questions propounded to him by this Court evasively and repeatedly gave contradictory answers to the same questions." When Clesson petitioned the Supreme Court for habeas corpus, Judge Ferguson on his own motion vacated his order of conviction.

Alvie W. Casey, August 26, 1940, on charge that he "answered evasively and repeatedly gave contradictory answers."

George J. Weiss, December 8, 1941, on charge that he "gave evasive and contradictory answers."

George J. Weiss, December 11, 1941, on charge that he "gave evasive and contradictory answers."

St. Aubin Jr., January 6, 1942, on charge that he "gave incorrect, evasive and contradictory answers."

By Judge Carr:

Charles S. Blondy, September 15, 1943, for "returning evasive and equivocal answers to questions and by giving contradictory testimony."

George Bonnier, April 22, 1944, for having "returned evasive, equivocal and contradictory answers and has refused to answer questions on matters concerning which it is reasonable to suppose he has full knowledge." (Certified copies of the orders in the foregoing cases have been filed in this court.)

PRAYER

Wherefore, Petitioner prays that a Writ of Certiorari issue out of and under the seal of this Court directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the Record and Proceedings of said cause to the end that this cause may be reviewed and determined by this Court and the judgment of said Circuit Court of Appeals be reversed and petitioner discharged.

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